

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tahreem Khan	Team: Squad #11	CCRB Case #: 201904802	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/26/2019 10:00 AM	Location of Incident: White Plains Road between East 223rd street and East 224th Street, and 47th Precinct Stationhouse		Precinct: 47	18 Mo. SOL 11/26/2020	EO SOL 7/13/2021
Date/Time CV Reported Sun, 05/26/2019 2:10 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 06/04/2019 11:18 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Katherine Tejada	20195	963297	047 PCT
2. POF Katherine Sepulveda	02055	959220	047 PCT
3. Officers			
4. POM Darren Davis	02211	950281	047 PCT
5. SGT Angel Dejesus	4405	934733	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Strawn	20637	959273	047 PCT
2. POM Kyron Delarosa	11960	960431	047 PCT
3. POM Ryan Duffany	04399	960483	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Katherine Tejada	Abuse: At White Plains Road between East 223rd Street and East 224th Street in the Bronx, Police Officer Katherine Tejada threatened § 87(2)(b) with the use of force.	
B.POF Katherine Sepulveda	Force: At White Plains Road between East 223rd Street and East 224th Street in the Bronx, Police Officer Katherine Sepulveda tightly handcuffed § 87(2)(b)	
C.POF Katherine Sepulveda	Abuse: At White Plains Road between East 223rd Street and East 224th Street in the Bronx, Police Officer Katherine Sepulveda searched the vehicle in which § 87(2)(b) was an occupant.	
D.POF Katherine Sepulveda	Abuse: Police Officer Katherine Sepulveda seized § 87(2)(b)'s property.	
E.POM Darren Davis	Discourtesy: At White Plains Road between East 223rd Street and East 224th Street in the Bronx, Police Officer Darren Davis spoke discourteously to § 87(2)(b)	
F.SGT Angel Dejesus	Abuse: At the 47th Precinct stationhouse, Sergeant Angel Dejesus did not process § 87(2)(b)'s complaint regarding an officer.	
G. Officers	Abuse: At the 47th Precinct Stationhouse, officers did not process § 87(2)(b)'s complaint regarding an officer.	

Case Summary

On May 26, 2019, § 87(2)(b) called 911 and was transferred to the IAB Command Center to file his complaint. This complaint was subsequently received at the CCRB on June 4, 2019.

On May 26, 2019 at approximately 10 a.m., Police Officer Katherine Tejada and Police Officer Katherine Sepulveda pulled over § 87(2)(b) on White Plains Road between East 223rd Street and East 224th Street in the Bronx after committing a traffic infraction. PO Tejada requested § 87(2)(b)'s driver's license and vehicle registration. § 87(2)(b) refused to provide it until the officers told him why they were stopping him. After arguing for a few minutes, § 87(2)(b) told PO Tejada and PO Sepulveda that they needed to call male officers to the scene. § 87(2)(b) also called PO Sepulveda a "bitch." PO Sepulveda then commanded § 87(2)(b) to exit the vehicle. § 87(2)(b) did not comply with PO Sepulveda's command, which she stated several times. PO Sepulveda attempted to open § 87(2)(b)'s vehicle door. § 87(2)(b) closed the door each time PO Sepulveda tried to open it. PO Tejada told § 87(2)(b) to exit the vehicle and pointed her taser at him (**Allegation A: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) exited the vehicle and PO Sepulveda allegedly tightened § 87(2)(b)'s handcuffs after they were initially placed on him (**Allegation B: Force**, § 87(2)(g)). Additional officers responded and Police Officer Darren Davis escorted § 87(2)(b) to a police vehicle. While § 87(2)(b) was in the police vehicle, PO Sepulveda searched § 87(2)(b)'s vehicle and determined that it would be taken back to the 47th Precinct stationhouse (**Allegations C and D: Abuse of Authority**, § 87(2)(g)). PO Davis and PO Tejada stayed near § 87(2)(b). PO Davis spoke discourteously to § 87(2)(b) (**Allegation E: Discourtesy**, § 87(2)(g)). PO Tejada and PO Sepulveda then escorted § 87(2)(b) to the 47th Precinct stationhouse. At the stationhouse, Sergeant Angel DeJesus and unidentified officers did not process § 87(2)(b)'s complaint regarding an officer (**Allegation F: Abuse of Authority**, § 87(2)(g)). **Allegation G: Abuse of Authority**, § 87(2)(g). § 87(2)(b) was not arrested during this incident but was issued eight summonses: five summonses for vehicle and traffic law violations and three criminal court summonses.

Video footage was obtained from § 87(2)(b) which was taken by himself during the incident using his cell phone. In addition, Body-Worn Camera footage, sent by the NYPD, was obtained on September 11, 2019. The footage will be discussed in further detail below.

Findings and Recommendations

Allegation (A) Abuse of Authority: At White Plains Road between East 223rd Street and East 224th Street in the Bronx, Police Officer Katherine Tejada threatened § 87(2)(b) with the use of force.

The investigation established the following facts:

On May 26, 2019 at approximately 10 a.m., § 87(2)(b) drove his vehicle southbound on East 225th Street towards § 87(2)(b). § 87(2)(b) made an illegal U-turn and stopped in front of the V.I.M. store. § 87(2)(b)'s vehicle was double parked and was stationary. After about a minute or two, PO Katherine Sepulveda and PO Katherine Tejada made the same U-turn that § 87(2)(b) had and stopped their vehicle near his. § 87(2)(g)

The video located in IA 50 (BR 05) is three minutes and forty-one seconds long. It was taken by § 87(2)(b) on May 26, 2019 around 10:00 a.m. It takes place on White Plains Road between East 223rd Street and East 224th Street in the Bronx. The video is in color and has audio. Between the 00:53 and 00:59 mark, it appears that PO Tejada pointed a taser at § 87(2)(b).

The video located in IA 83 (BR 06) of the digital case file was sent by the NYPD on September 11, 2019. The video is from May 26, 2019 and takes place outside of the V.I.M. located on White Plains Road in Manhattan between East 223rd Street and East 224th Street in the Bronx. The BWC video has audio and is in color. The video appears to be edited and blurs the officer's

phone. The video has a timestamp on the screen, and it is accurate. The video starts at the 09:58:07 mark and ends at the 10:26:07 mark. The total length of the video is 28:01 § 87(2)(g)

Between the 04:28 and the 04:35 mark, PO Sepulveda opened § 87(2)(b)'s vehicle door. Between the 04:36 mark and the 04:42 mark, PO Tejada threatened to tase § 87(2)(b) if he did not step out of his vehicle.

§ 87(2)(b) (BR 01) stated that after he had given PO Tejada his driver's license and vehicle registration, PO Sepulveda returned to his vehicle and asked if § 87(2)(b) provided the requested documentation. At this point, § 87(2)(b) was "roused" and began to voice his opinion. While § 87(2)(b) agreed that he used to word *bitch* when speaking to the female officers but denied flaring his arms. PO Sepulveda attempted to open § 87(2)(b)'s door and told him to get out of the vehicle. Each time PO Sepulveda opened the door, § 87(2)(b) closed his door again. PO Tejada pointed a taser at § 87(2)(b)'s face and held it about three feet away. After § 87(2)(b) saw the taser, he let the door go because he has a heart condition.

PO Tejada (BR 03) stated that she had asked § 87(2)(b) for his driver's license and vehicle registration multiple times. § 87(2)(b) refused to comply until PO Tejada told him why she needed his documents. After a few minutes of going back and forth, § 87(2)(b) had provided his identification. PO Tejada gave PO Sepulveda § 87(2)(b)'s documents. PO Sepulveda walked away from § 87(2)(b) towards her vehicle to run § 87(2)(b)'s information. § 87(2)(b) continued to yell and curse at PO Sepulveda and called her a "bitch," even though she was not near him. § 87(2)(b) continued to raise his voice louder as he was yelling, attracting attention from bystanders. During that conversation, § 87(2)(b) stated something along the lines that PO Tejada and PO Sepulveda needed to bring male officers to handle him. PO Tejada perceived that statement to be a threat because she thought that § 87(2)(b) might try to fight them. The officers decided to charge § 87(2)(b) with disorderly conduct because he was irate and was attracting attention from at least two bystanders. To get § 87(2)(b) out of his vehicle, PO Sepulveda opened § 87(2)(b)'s car door and told him to step outside. Each time PO Sepulveda opened § 87(2)(b)'s door; § 87(2)(b) closed it. PO Tejada pointed her taser at § 87(2)(b) and told him to step out of the vehicle.

§ 87(2)(g) She did not state where on § 87(2)(b)'s body she pointed the taser. PO Tejada thought that pointing her taser was the easiest way to gain compliance without using force. PO Tejada pointed the taser for about five seconds and § 87(2)(b) stepped out of the vehicle. Once § 87(2)(b) was outside of the vehicle, PO Tejada and PO Sepulveda both tried to handcuff § 87(2)(b) who resisted by tensing up his body and refusing to place his hands into handcuffs.

PO Sepulveda (BR 02) testified that after she put her gloves on, § 87(2)(b) became even more irate. He moved his hands from side to side, touched things in his car, and physically shifted his body side to side as well. At that point, she and PO Tejada determined that they needed to call for back-up. Before PO Sepulveda could call for back-up, additional units had arrived. PO Sepulveda returned to § 87(2)(b)'s vehicle and saw that § 87(2)(b) had given PO Tejada his driver's license and vehicle registration. PO Sepulveda felt that the situation was escalating, so she gave § 87(2)(b) three commands to step out of the vehicle, but § 87(2)(b) refused. After the third command, § 87(2)(b) opened his car door and stepped out. The investigation had presented the video located in IA 50, and allowed PO Sepulveda to amend her statement. She clarified that in order to get § 87(2)(b) out of his vehicle, PO Sepulveda opened his door. PO Sepulveda stated that § 87(2)(b) appeared to be out of control and made various hand gestures.

Officers should only use Conducted Electrical Weapon (CEW) against individuals who are actively resisting, exhibiting aggressive behavior, or pose a threat to themselves or others. A CEW is classified as a less lethal device and is intended to augment and provide a greater margin of safety for officers who might otherwise be forced to physically subdue a dangerous subject. NYPD Patrol Guide Procedure 221-08 (BR 07).

§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation (B) Force: At White Plains Road between East 223rd Street and East 224th Street in the Bronx, Police Officer Katherine Sepulveda tightly handcuffed § 87(2)(b)

§ 87(2)(b) (BR 01) stated that after he stepped out of his vehicle, PO Sepulveda handcuffed him. Initially, the handcuffs felt fine, but then PO Sepulveda squeezed the handcuffs to make them tighter or to double-lock them. § 87(2)(b) stated multiple times that the handcuffs were too tight. PO Sepulveda told § 87(2)(b) to listen to officers the next time.

PO Sepulveda (BR 02) testified that she did not independently recall § 87(2)(b) stating that the handcuffs were too tight.

PO Tejada (BR 03) was not aware if any officer tightened § 87(2)(b)'s handcuffs.

Police Officer Darren Davis (BR 08) testified that he arrived after § 87(2)(b) was handcuffed. § 87(2)(b) had asked PO Davis why he was handcuffed but did not mention the handcuffs being too tight.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation (C) Abuse of Authority: At White Plains Road between East 223rd Street and East 224th Street in the Bronx, Police Officer Katherine Sepulveda searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (D) Abuse of Authority: Police Officer Katherine Sepulveda seized § 87(2)(b)'s property.

§ 87(2)(b) (BR 01) stated that after he was placed in PO Sepulveda and PO Tejada's vehicle, he sat with his body inside of the vehicle and his feet positioned outside, preventing the door from being closed. § 87(2)(b) wanted to see what was happening with his vehicle. When § 87(2)(b) saw PO Sepulveda walk towards his vehicle to search it, he stated loudly that he did not want PO Sepulveda to search his vehicle. He then gave permission that any officer can search his vehicle, except for PO Sepulveda. § 87(2)(b) saw PO Sepulveda search the front, the back, the driver's side of the vehicle, and § 87(2)(b)'s satchel that was in the front of his vehicle.

PO Sepulveda (BR 02) testified that when she had first approached § 87(2)(b)'s vehicle, she smelled burning marijuana. From outside when she investigated his vehicle, she saw a green bottle with a burnt cigarette of marijuana in it. PO Sepulveda searched the driver's side, the passenger's side, and the back-passenger's side § 87(2)(b)'s vehicle because she needed to make sure that there were no weapons in the vehicle that could harm the officers as the vehicle was going to be taken back to 47th Precinct stationhouse, along with § 87(2)(b). During her search, PO Sepulveda found a "rolled brown paper cig. of marijuana" that was recovered from the center console of the vehicle, which was vouchered as arrest evidence.

PO Tejada (BR 03) stated that she also smelled a faint odor of marijuana when she approached § 87(2)(b)'s vehicle. After § 87(2)(b) was removed from his vehicle, he was placed inside of a police vehicle, where PO Tejada and PO Davis stayed with him. Although PO Tejada was not near PO Sepulveda, she did see PO Sepulveda search the "grab-able" areas of § 87(2)(b)'s vehicle. PO Tejada explained that § 87(2)(b)'s vehicle was returning to the 47th Precinct stationhouse because § 87(2)(b) was considered under arrest and his vehicle was illegally parked. After being taken to the stationhouse, § 87(2)(b) was presented in front of Sergeant Angel

DeJesus and shortly after lodged in a cell. After some time, § 87(2)(b) was released with multiple summonses and his money, cell phone, fanny pack, and car keys were returned to him. PO Tejada later learned from PO Sepulveda that she found marijuana in § 87(2)(b)'s vehicle. PO Tejada also saw PO Sepulveda voucher the marijuana, which appeared to look like a half-inch long burnt cigarette.

In Property Voucher number § 87(2)(b) (BR 19), PO Sepulveda vouchered as arrest evidence a green and dark vegetative substance that was rolled in brown paper.

According to the Marijuana Supporting Deposition Field Test Report (BR 09) that PO Sepulveda provided during her interview, the rolled down paper cigarette that PO Sepulveda recovered from the center console of § 87(2)(b)'s vehicle tested positive for marijuana.

Upon approaching § 87(2)(b)'s vehicle, both PO Sepulveda and PO Tejada smelled an odor of marijuana. From outside of § 87(2)(b)'s vehicle, PO Sepulveda observed a burnt cigarette of marijuana in a green bottle inside of § 87(2)(b)'s vehicle. Because § 87(2)(b) was under arrest and was being transported back to the 47th Precinct stationhouse, § 87(2)(b)'s vehicle could not be left on the street as it was illegally parked. Since § 87(2)(b) was alone in his vehicle, there was no one else who could have been given § 87(2)(b)'s car keys. As a result, PO Sepulveda and PO Tejada determined that § 87(2)(b)'s vehicle also needed to be transported back to the stationhouse and needed to be searched for weapons, for the purpose of the officer's safety. During her search, PO Sepulveda found the cigarette of marijuana that she observed earlier during her interaction with § 87(2)(b). PO Sepulveda vouchered this marijuana and submitted it for testing when she returned to the stationhouse. The Marijuana Supporting Deposition Field Test Report confirmed that the rolled brown paper cigarette PO Sepulveda found was indeed marijuana.

If any property comes into the custody of the NYPD, then officers must conduct an inventory search. In addition, if items within an automobile are to be inventoried, then officers must search the vehicle thoroughly. NYPD Patrol Guide Procedure 218-13 (BR 10).

Courts have ruled that when the driver of a vehicle is arrested, the police may impound the vehicle and search it without the consent of the driver. People v. Walker, 20 N.Y.3d 122 (2012) (BR 04).

§ 87(2)(g)

Allegation (E) Discourtesy: At White Plains Road between East 223rd Street and East 224th Street in the Bronx, Police Officer Darren Davis spoke discourteously to § 87(2)(b)

§ 87(2)(b) (BR 01) did not allege that an officer spoke to him discourteously. After reviewing PO Tejada's BWC located in IA 83 (BR 06) of the digital case file, it appears that between the 15:57 mark and the 15:59 mark, PO Davis spoke discourteously to § 87(2)(b) when he stated, "no one is a fucking animal here. I know we got a job to do and stuff like that, but I want to talk to you as a man. You are a man. You are not a child." Additionally, between the 22:30 mark and the 22:33 mark, PO Davis spoke discourteously to § 87(2)(b) when he stated, "I don't want them screaming and shit like that" when referring to a crowd that had formed.

§ 87(2)(b) (BR 01) stated that he had a conversation with a Black male officer while he was in handcuffs and sat in PO Sepulveda and PO Tejada's vehicle.

PO Tejada (BR 03) mentioned that PO Davis placed § 87(2)(b) in the vehicle and spoke to him for some time; however, PO Tejada did not recall the contents of the conversation.

PO Davis (BR 08) initially stated that he did not use any discourteous language when he spoke with § 87(2)(b). The investigation presented the video located in IA 83 (BR 06) and played the above-mentioned time stamps in which PO Davis made the following statements when speaking with § 87(2)(b): "No one is a fucking animal here. I know we have a job to do and stuff like that,

but I want to talk to you as a man. You are a man. You are not a child” and when explaining to § 87(2)(b) that he and his vehicle would be taken back to the stationhouse, PO Davis stated “I don’t want them screaming and shit like that,” referring to the crowd in the background. PO Davis stated that he did not want his statements to be taken out of context, so he wanted the investigation to listen to the entire conversation between him and § 87(2)(b).

In an NYPD departmental trial, the court held that although an officer may have good intentions, the use of discourteous language with the public is unprofessional. *Disciplinary Case No. 2018-18951* (BR 17).

§ 87(2)(g)

Allegation (F) Abuse of Authority: At the 47th Precinct stationhouse, Sergeant Angel DeJesus did not process § 87(2)(b) s complaint regarding an officer.

PO Sepulveda's BWC video, located in IA 84 (BR 12) was sent by the NYPD on September 11, 2019. The video is from May 26, 2019, starts outside of the V.I.M. located on White Plains Road in Manhattan between East 223rd Street and East 224th Street in the Bronx, and ended at the 47th Precinct stationhouse. The BWC video has audio and is in color. Between the 28:14 mark and the 28:26 mark, § 87(2)(b) stated to Sergeant Angel DeJesus that he wanted to make a complaint.

§ 87(2)(b) (BR 01) stated that when PO Tejada took § 87(2)(b) out of the holding cell to release him, she escorted him to the front desk, where § 87(2)(b) told the officer behind the desk—Sgt. DeJesus—that he wanted to file a complaint, but Sgt. DeJesus did not do anything.

Sgt. DeJesus (BR 11) did not have an independent recollection of § 87(2)(b) stating to him that he wanted to file a complaint. The investigation played the video located in IA 84, in which § 87(2)(b) was brought into the stationhouse, told Sgt. DeJesus that he wanted to make a complaint. Sergeant DeJesus turned to PO Sepulveda and asked what the charges were, to which PO Sepulveda responded “§ 87(2)(b).” § 87(2)(b) responded to PO Sepulveda stating that she can continue to add on more charges and that he was going to see her in court. § 87(2)(b) further stated, while still in front of Sgt. DeJesus, that PO Sepulveda needed to be dealt with. After showing Sgt. DeJesus this video, he acknowledged that § 87(2)(b) requested to file a complaint, but did not independently recall § 87(2)(b) making that request. Sgt. DeJesus never took a complaint for § 87(2)(b). He did not recall if he directed any other officer to take § 87(2)(b) s complaint.

Officers are required to take the appropriate steps and file complaints made by civilians alleging misconduct by uniformed members of service. NYPD Patrol Guide Procedure 207-31 (BR 13).

§ 87(2)(g)

Allegation (G) Abuse of Authority: At the 47th Precinct stationhouse, officers did not process § 87(2)(b) s complaint regarding an officer.

§ 87(2)(b) (BR 01) stated that on his way out of the stationhouse, § 87(2)(b) told an unidentified officer who sat near the exit that he wanted to file a complaint. § 87(2)(b) described

this officer to be a Black male, with a bald head, age in 30's, and wore a blue NYPD uniform. Another unknown officer then came and told § 87(2)(b) that he can call the 311 number on the poster to file a complaint, but § 87(2)(b) needed to leave the property to do so. § 87(2)(b) described this second officer to me a Hispanic male, with a large build, weighing about 220-230 lbs., about 6'0" to 6'1" tall, with short dark slicked back hair, and whose approximate age was in his early 20's.

PO Tejada (BR 03) stated that after being released, § 87(2)(b) remained in the stationhouse, speaking loudly on his phone. He told PO Tejada that he wanted to file a complaint. PO Tejada asked § 87(2)(b) to sit down while she went to tell someone about it, possibly the desk sergeant, but she was not sure exactly whose attention she brought § 87(2)(b)'s request to. In the meantime, § 87(2)(b) continued to talk loudly on the phone. An unknown officer—PO Tejada could not recall who—told § 87(2)(b) that he could not be on the phone in the stationhouse, and if he wanted to stay on the phone, then he could also call and make a complaint.

According to the desk copy of roll call (BR 18) PO Strawn was assigned to stationhouse security; however, it is unclear where in the stationhouse he was to be positioned. Additionally, PO Davis (BR 08) testified that PO Matthew Strawn had responded to the first incident involving § 87(2)(b) who (BR 01) did not indicate that he recalled seeing PO Strawn again.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has no prior CCRB complaints (BR 14).
- Police Officer Katherine Sepulveda has been a member of service for four years and has been a subject in two other CCRB complaint.
 - 201609709 has substantiated charges for a vehicle search. The Board recommended Command Level 1 Instructions and the NYPD's disposition and penalty were for formalized training.
 - PO Sepulveda has a total of five charges, including this case, and two of her total charges are for vehicle searches.
- Police Officer Katherine Tejada has been a member of service for three years and does not have a prior CCRB history.
- Police Officer Darren Davis has been a member of service for eight years and has been a subject in two other CCRB cases for four allegations, none of which have been substantiated.
- Sergeant Angel DeJesus has been a member of service for 15 years and has been a subject in five other cases, one of which is active, and a subject to six other allegations, none of which have been substantiated.
 - Out of the total seven allegations, including this complaint, PO DeJesus has two allegations of refusal to process civilian complaint.

Mediation, Civil and Criminal Histories

- This case was unsuitable for mediation.
- As of August 7, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (BR 15).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]

Squad No.: 11

Investigator: Tahreem Khan Inv. Tahreem Khan May 20, 2020
Signature Print Title & Name Date

Squad Leader: Edwin Pena IM Edwin Pena 05/20/20
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date